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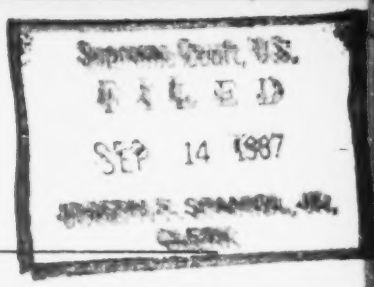

NO. 87-

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1987

GRIFFIN AND BRAND OF MCALLEN, INC., ET. AL.,

PETITIONERS,

v.

MARGARITO REYES, ET. AL.,

RESPONDENTS.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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September 11, 1987

QUESTIONS PRESENTED FOR REVIEW

1. Whether the instant case is a proper case for the issuance of a writ of mandamus.

2. Whether Respondents carried the burden of showing that they are entitled to issuance of a writ of mandamus:

   a. Whether Respondents have an alternative adequate remedy available;

   b. Whether Respondents have shown a clear right to the relief sought; and

   c. Whether the District Court had a duty to rule in favor of Respondents.

3. Whether the Court of Appeals based issuance of the writ of mandamus on the erroneous finding that Petitioners' reason for inquiring into Respondents' citizenship or immigration status was to determine Respondents' eligibility for representation by a Legal Services Corporation grantee.

PARTIES TO THE PROCEEDINGS BELOW

The Respondents before this Court, who were the Plaintiffs in the District Court and the Petitioners for writ of mandamus in the Court of Appeals are the following individuals:

Margarito Reyes
Enrique Alanis
Jesus Alaniz Gonzalez
Rafael Cardenas, Sr.
Rafael Cardenas, Jr.
Santos Carrizales
Bernardo Cervantes
Enrique Diaz
Esteban Hernandez
Juan Hernandez
Juan Jose Nunez
Andres Olivares
Juan Guel Palacios
Abraham Rivera
Jose Solis
Frumencio Torres Trigo
Heberto Valdez
Alfonso Vargas
Pedro Vargas
Abraham Barbosa, Sr.
Cristina Barbosa
Juan Lopez

The Petitioners before this Court, the Defendants before the District Court, and the Respondents to the petition for writ of mandamus in the Court of Appeals are the following farmers and farm labor contractors:

Griffin & Brand of McAllen, Inc.
Daniel Torres
Alfredo Cantu
Benito Bazan
Guadalupe Saldivar

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RESPONDENTS.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

DECISIONS BELOW

On July 28, 1986, the United States District Court for the Southern District of Texas, Brownsville Division, ordered the Respondents to answer an interrogatory propounded to the Respondents by Petitioners herein which stated:

> "Are you a citizen of the United States? If so, were you born in the United States? If so, please state where you were born and your birth date. If you are a naturalized citizen of the United States, please state where and when you became a citizen of the United States. If you are not a citizen of the United States, please state your immigration status."

Respondents sought a writ of mandamus in the United States Court of Appeals, Fifth Circuit, directing the District Court to withdraw the discovery order of July 28, 1986. On March 30, 1987, the Court of Appeals, with Circuit Judge Edith H. Jones dissenting, granted the writ of mandamus sought by Respondents. That opinion is reported at 814 F.2d at 168 (5th Cir. 1987) and appears at Appendix "A" hereof. Petitioner's petition for rehearing was denied on June 16, 1987 with Judge Jones again dissenting. (Appendix "B")

JURISDICTION

The jurisdiction of the Court is invoked under 28 U.S.C. § 1254(1) and Rule 17 of the

Rules of the Supreme Court of the United States, in that the decision by the United States Court of Appeals for the Fifth Circuit conflicts with the decisions of other federal courts of appeals and this Court on the same matter and so far departs from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's power of supervision.

Date of opinion sought to be reviewed: March 30, 1987.

Date of order denying petition for rehearing: June 16, 1987.

STATUTES INVOLVED

Respondents' cause of action alleges violations of the Migrant and Seasonal Agricultural Workers Protection Act, 29 U.S.C. § 1801 et seq. and the Fair Labor Standards Act 29 U.S.C. § 201 of seq. The Court of Appeals opinion brings into issue the Legal Services Corporation Act, 42 U.S.C. § 2996 et seq. (Appendix "C", "D" and "E")

STATEMENT OF THE CASE

Background: The individual Respondents, Plaintiffs in the District Court, are farm workers who were employed by Petitioners Benito Bazan, Alfredo Cantu, Guadalupe Saldivar and Daniel Torres, registered Farm Labor Contractors to harvest crops and perform other agricultural labor in the Pecos, Texas area during the fall of 1984. The crops which Respondents harvested were owned by Petitioner Griffin and Brand of McAllen, Inc., a family owned corporation which grows, harvests, processes and sells agricultural commodities.

The complaint: On October 15, 1985, 30 farm workers filed suit against Benito Bazan, Alfredo Cantu, Guadalupe Saldivar, Daniel Torres and Griffin and Brand of McAllen, Inc. alleging that they were migrant farm workers who had been recruited in Hidalgo County, Texas to perform agricultural work in the Pecos, Texas area. Respondents allege

violations of the Agricultural Worker Protection Act 29 U.S.C. § 1801 et seq. (hereinafter "AWPA"), the Fair Labor Standards Act, 29 U.S.C. § 201 et seq. (hereinafter "FLSA") and breach of an alleged employment contract. (Appendix "F") Respondents denied all substantive allegations by Petitioners. (Appendix "G")

District Court's Action: Pursuant to ordinary discovery proceedings, Petitioners filed interrogatories, requests for production and scheduled depositions of Respondents. Respondents objected to answering some of the interrogatories, producing some of the documents requested and during depositions, refused to answer questions directed at their citizenship and immigration status.

Petitioners filed a motion to compel answers to the subject interrogatory. (Appendix "H") Following hearing on July 17, 1986, the District Court ordered Respondents

to respond to the interrogatory concerning citizenship and immigration status stating as the reason therefor: "The Court is of the opinion that Defendant is entitled to this information as it may led to relevant evidence." (Appendix "I")

Respondents' motion for reconsideration of the District Court's order was denied by the District Court on October 3, 1986. (Appendix "J")

Court of Appeals' Action: Following entry of the District Court's order of October 3, 1986, Respondents sought issuance of a writ of mandamus from the United States Court of Appeals for the Fifth Circuit, filing their petition on November 4, 1986. Following submission of briefs by Petitioners herein, the Court of Appeals granted the petition for writ of mandamus on March 30, 1987. (Appendix "A") Petitioners timely filed petition for rehearing was denied by

the Court of Appeals on June 18, 1987. (Appendix "B")

In issuing mandamus the Court of Appeals found that the District Court granted discovery on two grounds:

1. "First, a legal services corporation is not entitled to represent undocumented aliens, and..."

2. "second, there is an issue of coverage of undocumented aliens under the Migrant and Seasonal Agricultural Workers Protection Act and the Fair Labor Standards Act."

The Court of Appeals then granted the petition for writ of mandamus stating that the District Court could not inquire into the propriety of representation and that the District Court had ordered discovery as to information which was "completely irrelevent".

The Court of Appeals stated its purpose for issuing the writ of mandamus "to confine

an inferior court to a lawful exercise of its prescribed jurisdiction."

Circuit Judge Edith H. Jones dissented, pointing out in her opinion that the Petitioners herein "never sought to justify their discovery request" on the issue of propriety of representation. Circuit Judge Jones based her dissent on her opinion that the Respondents' permanent place of residence is a material issue in the pending case; and that therefore, the matters sought to be discovered by Petitioners are relevant. Circuit Judge Jones also dissented from the Court of Appeals' denial of Petitioners' petition for rehearing.

REASONS FOR GRANTING THE WRIT

I. THIS IS NOT A PROPER CASE FOR THE ISSUANCE OF A WRIT OF MANDAMUS.

As stated many times by this Court, mandamus is an extraordinary remedy which should only be used in extraordinary cases.

Kerr v. U.S. District Court for N. Dist. of Cal., 426 U.S. 394, 96 S.Ct. 2119, 48 L.Ed.2d 725 (1976); Will v. United States, 389 U.S. 90, 88 S.Ct. 269, 19 L.Ed. 2d 305 (1967); Bankers Life & Cas. Co. v. Holland, 346 U.S. 379, 74 S.Ct. 145, 98 L.Ed. 106 (1953). Historically, mandamus was limited to those cases where a Court either refused to act or acted in excess of its judicial power. More recently, Courts of Appeals have used mandamus as a supervisory mechanism over a District Court that abused its discretion. Mandamus has been used on rare occasions to correct or vacate a discovery order entered by a District Court. However, the burden in such cases is considerable; parties seeking the writ must show that the right to issuance of the writ is clear and indisputable. Will v. United States, supra at 389 U.S. 96.

In the instant case, Respondents did not even attempt to satisfy this burden. Instead of directing their brief to the Court of

Appeals at satisfying the burden of mandamus by focusing on the information sought through the subject interrogatory, Respondents' brief was instead directed at arguing the propriety of the District Court determining whether Texas Rural Legal Aid, Inc. (a Legal Services Corporation grantee) legally represents Respondents, an issue that was not even before the District Court. The District Court was not conducting an inquiry into the propriety of representation of Respondents by Texas Rural Legal Aid, Inc. To the contrary, this is a case where discovery was still in progress and the District Court was properly performing its function of supervising discovery matters. In that regard, the District Court, after due consideration of the issues involved, determined that Petitioners were entitled to discover information concerning the Respondents' citizenship and immigration status. This is certainly not a fact

situation that demands the issuance of mandamus.

Compare the fact sitution in the instant case to the fact situation of In re Sessions, 672 F.2d 564 (5th Cir. 1982), a case wherein that Court denied mandamus regarding a District Court's ruling on a discovery matter. In Sessions, the Petitioner was confined in the penitentiary, convicted of capital murder. He sought an order from the District Court to take non-stenographic depositions. The District Court denied the request.

The Court of Appeals denied the petition for a writ of mandamus stating:

> "We hold that the Petitioner has not met his burden of demonstrating that he has a clear right to the relief sought nor has he established that the District Court had a clear duty to grant the motion."

Further, the Court stated:

> "Moreover, we are not persuaded that this is such an 'exceptional case where there is a clear abuse of discretion' which would justify

> the intervention of our supervisory power."

In re Sessions, supra at 567.

Even if all the matters as alleged by Respondents in the instant case are taken as correct, there are certainly no factors which show that Respondents have a clear right to the relief sought and that the District Court had a clear duty to deny the discovery sought by Petitioners.

Mandamus is not to be used when the most that could be claimed is that the District Court erred in ruling on matters within its jurisdiction. Schlagenhauf v. Holder, 379 U.S. 104, 85 S.Ct. 234, 13 L.Ed. 2d 152 (1964). Yet, even if all the allegations in Respondents' brief to the Court of Appeals are taken as admitted, that is the most that can be made of their claim.

As stated by the Court in In re Bankers Life & Casualty Co., 199 F.2d 593 (5th Cir.

1952); aff'd, 346 U.S. 379, 74 S.Ct. 145, 98 L.Ed. 106 (1953):

> "Upon full consideration of the briefs and arguments on the motion to dismiss, the court is of the opinion that no fact or reason is stated showing that the relief by mandamus is an appropriate remedy. Without, therefore, determining or considering on the merits, whether the order complained of was rightly entered, the motion to dismiss the petition, because the relief prayed for is not appropriate, is granted and the petition is dismissed."

Such should have been the result in the instant case.

II. RESPONDENTS DID NOT CARRY THE BURDEN OF SHOWING THAT THEY WERE ENTITLED TO A WRIT OF MANDAMUS

Under the law as stated by the Court, a party seeking a writ of mandamus must demonstrate that three elements co-exist:

1. No other adequate remedy available;
2. Clear right to relief sought; and,
3. Clear duty on part of Respondent to do the act in question.

In re Sessions, supra at 566.

A. RESPONDENTS HEREIN HAD AN ALTERNATIVE ADEQUATE REMEDY AVAILABLE.

A petition for writ of mandamus must be denied where the party seeking the writ has an alternative adequate remedy available. Respondents, in their application to the Court of Appeals, asserted that they had no adequate remedy available to them other than mandamus. However, their reasoning to support this allegation was simply that the District Court's order was interlocutory in nature and not immediately appealable. The burden of the party seeking a writ of mandamus is to show that an appeal after a final judgment can "promise no more than 'a clearly inadequate remedy'". Donnelly v. Parker, 486 F.2d 402 (D.C. Cir. 1973). Donnelly involved an interlocutory discovery order that was unappealable [immediately unappealable], yet the Court of Appeals held that

such an order was not a basis for the issuance of a writ of mandamus.

Moreover, even if the District Court's order was unappealable, a denial of the writ would not foreclose Respondents' right in the event of a future appeal from a final judgment to demonstrate, if they could, that the order of the District Court amounted to reversible error. This is the precise position that the Court took when it denied the petition for writ of mandamus in In re Sessions, supra.

Even if Respondents could show that an appeal after a final judgment would be a clearly inadequate remedy, the District Court's order would nonetheless be reviewable through disobedience.

If Respondents' status is such that they are entitled to claim the Fifth Amendment privilege, they can do so or, as stated by the District Court in granting discovery:

> If for some reason you think it should be - that the plaintiffs for some reason have a reason why it should be held confidential, whether it's because they are here illegally or whatever, then go ahead and file a motion to that effect."
> (Appendix "K")

Respondents did not file a motion with the District Court, but instead, sought the drastic remedy of mandamus.

Because of the alternatives available to Respondents, a writ of mandamus was not the proper course of action in the instant case. National Right To Work Legal Defense v. Richey, 510 F.2d 1239 (D.C. Cir. 1975).

B. RESPONDENTS DID NOT HAVE A CLEAR RIGHT TO THE RELIEF SOUGHT

1. The Interrogatory Concerning The Citizenship And Immigration Status Of Respondents Is Relevant Or Reasonably Calculated To Lead To Discovery Of Admissible Evidence.

Respondents, in their complaint, allege rights under the Migrant and Seasonal

Agricultural Worker Protection Act (AWPA), 29 U.S.C. §§ 1801 et. seq., and the Fair Labor Standards Act (FLSA), 29 U.S.C. §§ 201 et. seq., and further allege that such rights have been violated by Petitioners. Respondents also allege that Petitioners violated an oral employment contract. To support their standing to bring this suit, Respondents allege that they are "migrant farm workers who reside in Texas". (Plaintiffs' Complaint - Appendix "F", page 2) None of these allegations are admitted by Respondents in their Answer (Appendix "G"); thus such allegations remain controverted. Therefore, potential issues to be determined at trial include the following:

(1) Whether Respondents are covered by AWPA and FLSA;

(2) If so, whether Petitioners violated AWPA and FLSA;

(3) If Respondents are covered by AWPA, whether they are covered as "migrant

agricultural workers" or as "seasonal agricultural workers";

(4) Whether Respondents reside in Texas or elsewhere;

(5) Whether a contract of employment existed between Respondents and Petitioners;

(6) If so, whether the contract aided Respondents in making an illegal entry into the United States and is therefore, void; and,

(7) Whether Petitioners violated the AWPA by hiring undocumented aliens.

Because of these issues and other issues that may arise upon discovery of the information sought by Petitioners, the inquiry into the citizenship and immigration status of Respondents is relevant and most certainly, reasonably calculated to lead to discovery of admissible evidence.

Moreover, Petitioners herein maintain that the inquiry is, not merely relevant, but

necessary in order for Petitioners to prepare a proper defense in the instant case.

2. The District Court Did Not Commit Error.

The District Court based its decision on the fact that Petitioners' interrogatory concerned information which may lead to relevant evidence. (Court's Order of July 28, 1986 - Appendix "I")

Respondents contended, and the Court of Appeals found, that the District Court erred because it allowed the propriety of representation to become an issue in the the underlying action. Although in issuing its ruling, the District Court made a comment regarding the propriety of representation, the District Court's ultimate decision to order Respondents to answer the interrogatory in question was based on the District Court's determination that the interrogatory would lead to relevant evidence.

The District Court, in so ruling, was clearly acting within the broad discretion available to it where pre-trial discovery matters are concerned. Paramount Film Distributing Corporation v. Civic Center Theatre, 333 F.2d 358 (10th Cir. 1964).

3. The District Court Acted Within Its Judicial Discretion.

A petition for writ of mandamus must be denied if the District Court acted within its judicial discretion, notwithstanding that it may have committed error. Petitioners herein contend that the District Court's ruling was correct. However, even if it could be shown that the District Court committed error in its ruling, a writ of mandamus cannot be used to correct an error in the exercise of judicial power. Will v. United States, supra, Paramount, supra. Such a writ is reserved for extreme situations. J.H. Cohn & Co. v. American Appraisal Associates, Inc., 628 F.2d

994 (7th Cir. 1980). In J.H. Cohn & Co., the Court stated that:

> "A writ of mandamus is reserved for extraordinary situations because of the interest in discouraging piecemeal appeals, which is in line with the congressional judgment that, as a general rule, appellate review should await the entry of final judgment by the trial court". J. H. Cohn & Co., supra at 997.

J.H. Cohn & Co. did not involve a district judge who had ruled on a discovery motion, but a judge who had refused to certify a class action. The Court of Appeals in J.H. Cohn & Co. denied the petition for writ of mandamus, emphasizing that the Petitioner must "demonstrate a clear and indisputable right for the drastic remedy of mandamus." J.H. Cohn & Co., supra at 997.

In order to demonstrate such a right, Petitioners must first show, inter alia, that the District Court not only committed error, but that such error amounted to an abuse of discretion. Moreover, to warrant the issuance of the writ, there must be a clear

abuse of discretion or usurpation of judicial power, lest Courts find themselves reviewing unappealable orders on the mere ground that they may be erroneous. Iowa Beef Processor, Inc. v. Bagley, 601 F.2d 949 (8th Cir. 1979).

A writ of mandamus has been restricted to those situations in which the District Court has taken an action which it has no power to take or when the District Court has abused its discretion to the point that there is a "usurpation of power" which will justify issuing a writ of mandamus. Schlagenhauf v. Holder, supra; Kerr v. United States Dist. Ct. for No. Dist. of Cal., supra; and Bauman v. United States Dist. Court, 557 F.2d 650 (9th Cir. 1977).

As previously stated, Petitioners herein sought information regarding Respondents' citizenship or immigration status and Respondents refused to disclose such information. Petitioners filed a motion to compel

responses. Therefore, the District Court had, not only the power to rule on the motion, but the duty to rule. The District Court did not abuse its discretion by ruling against Respondents. A writ of mandamus is not to be used to control the decision of the District Court as done by the Court of Appeals, but rather, it is to be used to confine a District Court to the sphere of its discretionary power. Schlagenhauf v. Holder, supra.

In this regard, the District Court has broad discretion in handling pre-trial discovery matters which are not reviewable in a mandamus action. City of Cleveland v. Krupansky, 619 F.2d 572 (6th Cir. 1980).

This discretionary power obviously includes the power to rule on pre-trial motions, including a motion to compel responses to interrogatories.

4. Respondents Failed To Demonstrate Irreparable Harm.

Even if it could be argued that the District Court abused its discretion in its ruling in this matter, Respondents also have the burden to demonstrate that harm will, in all likelihood, occur absent a writ of mandamus. Arthur Young & Co. v. United States District Court, 549 F.2d 686 (9th Cir. 1977). In Young, the Court stated:

> "Interference with the trial court's control over its own proceeding is not a matter to be undertaken lightly or on the basis of mere speculation by the parties or the reviewing court about what may occur at some future date."
> (emphasis added) Young supra at 692.

This statement is paticularly relevant in the instant case since any harm alleged is purely speculative at this stage of the proceedings.

Since Respondents in the case at bar failed to demonstrate, or even to allege, any hardship, let alone any irreparable harm which would befall them if they complied with the District Court's order, the Court of

Appeals erred in issuing the writ of mandamus. In re W.J. Estelle, Jr., 516 F.2d 480 (5th Cir. 1975). Although Respondents alluded to an invasion of privacy argument in their application; mere assertion of a constitutional violation is simply not sufficient to warrant the issuance of a writ of mandamus. Oswald v. McGarr, 620 F.2d 1190 (7th Cir. 1980).

C. THE DISTRICT COURT HAD NO DUTY TO RULE IN FAVOR OF RESPONDENTS.

In order for Respondents to be entitled to the issuance of a writ of mandamus, they must demonstrate that the District Court had a clear duty to deny the motion to compel a response to the subject interrogatory. The District Court properly based its decision on the fact that the answer to the interrogatory would lead to relevant evidence. The District Court has broad discretion in the area of pre-trial discovery. City of Cleveland v. Krupansky, supra. The Court of Appeals, by

issuing the writ of mandamus, is unduly and improperly curtailing the exercise of that discretion.

III. THE COURT OF APPEALS BASED ISSUANCE OF THE WRIT OF MANDAMUS ON THE ERRONEOUS FINDING THAT PETITIONERS' REASON FOR INQUIRING INTO RESPONDENTS' CITIZENSHIP OR IMMIGRATION STATUS WAS TO DETERMINE RESPONDENTS' ELIGIBILITY FOR REPRESENTATION BY A LEGAL SERVICES CORPORATION GRANTEE.

In its opinion, the Court of Appeals stated that the District Court granted discovery as to the interrogatory in question based on two grounds: "First, a legal services corporation is not entitled to represent undocumented aliens, and second, there is an issue of coverage of undocumented aliens under the Migrant and Seasonal Agricultural Workers Protection Act and the Fair Labor Standards Act." The Court then

proceeded to address the above stated grounds. Further, the Court stated that the information sought is "...completely irrelevant to the case before it and was information that could inhibit Petitioners in pursuing their rights...".

With all due respect to the Court of Appeals, Petitioners take issue with the opinion of the Court of Appeals and issuance of the writ of mandamus on the grounds stated.

While Petitioners concede that the issue of whether a legal services corporation under the Legal Services Corporation Act, 42 U.S.C. § 2996 et seq. is prohibited from representing undocumented aliens is not an issue that may be litigated in the District Court, Petitioners never attempted to justify discovery of Respondents' citizenship or immigration status on that basis. The propriety of representation of Respondents by Texas Rural Legal Aid, Inc. is simply not an issue that

was before the District Court nor the Court of Appeals.

CONCLUSION

Respondents herein did not seek the writ of mandamus to prohibit the District Court from delving into the authority of Texas Rural Legal Aid, Inc. to represent Respondents. Rather, the writ of mandamus that Respondents sought and that the Court of Appeals granted is much broader, preventing Petitioners from discovering evidence that: (1) may lead to admissible evidence; (2) constitutes relevant evidence; and (3) is essential to Petitioners if they are to be afforded a fair trial.

WHEREFORE, PREMISES CONSIDERED, Petitioners pray that this petition for writ of certiorari be granted and that the Court overrule the Court of Appeals' issuance of a writ of mandamus to the District Court in the instant case.

Respectfully Submitted,

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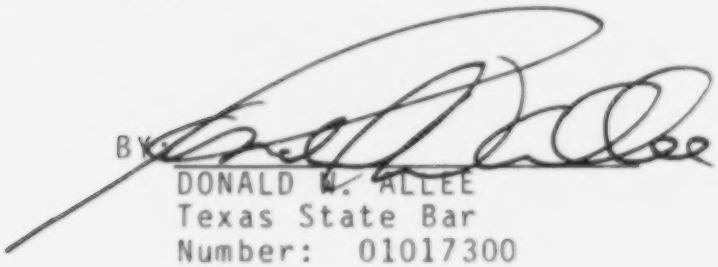
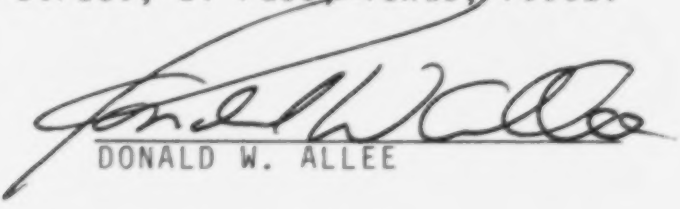
BY: 
DONALD W. ALLEE
Texas State Bar
Number: 01017300

ATTORNEY FOR PETITIONERS

CERTIFICATE OF SERVICE

On this 11th day of September, 1987, I provided three copies of the foregoing PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT to all parties or their counsel of record by depositing the same in the U.S. mail, first-class postage prepaid, addressed to Jose R. Rodriguez, Texas Rural Legal Aid, Inc., 1220 North Stanton Street, El Paso, ~~Texas,~~ 79902.


DONALD W. ALLEE